

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8102 of 1995

with

Sp. C. A. Nos. 8103, 6594, 6595, 6596, 6597, 6598, 6599, 7536, 7608, 10320, 10321, 10322 and 10323 of 1995.

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VANMALIBHAI KALIDAS HAJARI

Versus

STATE OF GUJARAT

Appearance:

In special civil application No.7608 of 1995

MR SH SANJANWALA for Petitioners

MRS SIDDHI TALATI for Respondents

In all other special civil applications:

MS VASUBEN P SHAH with MS KJ BRAHMBHATT for Petitioner

MRS SIDDHI TALATI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/10/97

ORAL JUDGEMENT

1. As all these special civil applications proceed

on the same facts and grounds of challenge to the impugned orders they are being taken up for hearing together and are being disposed of by this common order.

2. Leading arguments in these matters are being advanced by Ms. Vasuben P. Shah, Senior Advocate with respect to the special civil application No.8102/95, and as such, the facts are being taken from the aforesaid special civil application for the purpose of deciding these special civil applications.

3. On 26th September, 1997, at one point of time, this Court thought to implead the Airport Authority of India as a respondent herein but the counsel for the petitioners has not taken the notice of the said authority for direct service. After hearing the learned counsel for the parties, I am satisfied that now this order is not required to be carried out.

4. One Dahyabhai Vestabhai was the owner of the land bearing Survey NO.378/1 situated as village Dumas. The holder of the aforesaid land divided it into 48 sub-plots. Thereafter he applied for obtaining permission to sell the sub-plots for making use thereof for non-agricultural purpose to the respondent No.3 under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act, 1948'). The respondent No.3 vide its order dated 29th April, 1967 granted the permission to the holder of the land aforesaid with certain conditions inter-alia to make the use of sub-plots for non-agricultural purpose by transferee within two years from the date of the order. On 20th May, 1967 the owner aforesaid sold the sub-plots to 48 persons including the petitioner in this present special civil application by registered sale deed. It is not in dispute that under the town planning scheme which has been published on 23rd December, 1969, the land in question was put under reservation for the purpose of extension of aerodrome for civil aviation and transport. After the purchase of the plot in question by the petitioners they have taken the necessary steps for extension of the time limit by the respondent No.3 for making non-agricultural use thereof by making applications. They have also moved an application under the Bombay Land Revenue Code for N.A. permission.

5. The Taluka Development Officer concerned vide its order dated 18th June, 1971 declined to grant N.A. permission to the petitioners. They preferred an appeal against the said order but that appeal has also been dismissed. Under the letter of the Government dated 20th

April, 1981, the State Government issued direction treating the permission to sell all the subplots to the petitioners as deemed to have been automatically cancelled. In pursuance of the aforesaid letter of the Government, the concerned Mamatdar ordered for entering the name of the original owner in the revenue record in respect of the land in dispute. This order was stated to be passed without giving any notice or opportunity of hearing to the petitioners. After purchase of this land by the petitioners their names have been entered in the revenue record in the year 1969-70 and till then their names were continued in the revenue record. The Mamatdar concerned ultimately vide its order dated 21st October, 1993 entered the name of the original owner in the revenue record. Hence, these special civil applications.

6. Manifold contentions have been raised by the learned counsel for the petitioners in these special civil applications but I do not consider it to be necessary to advert to all those contentions as I am of the opinion that the matter needs to be considered by the High Power Committee of the State Government after hearing the parties concerned.

7. It is understandable that in the Town Planning Scheme land may be reserved for the public purposes and the reservation of the land in dispute for the purpose of extension of aerodrome for civil aviation and transport may be termed as a public purpose. However, the development plan appears to be have been notified on 23rd December, 1969 and for all these years i.e. about 28 years this land has not been acquired for the aforesaid public purpose. What actually the respondent has done in the present case, has put the sword hanging on the head of the petitioners. The petitioners are the bonafide purchasers of the sub-plots of the land of Survey No.378/1. The owner of the said land after dividing the land in sub-plots and taking the permission sold the same to the petitioners under the registered sale deeds and the petitioners have purchased those plots for the purpose of constructing the residential houses but for all these years they could not put this land to the use as what the counsel for the petitioners contended that the permission has not been granted to them for construction thereon on the ground that the land is reserved in the Town Planning Scheme for the purpose of extension of aerodrome for civil aviation and transport. It is true that the petitioners have to sacrifice their land for the public purpose and it is equally true that the State, if in case it really needs the land for public

purpose, has to take appropriate action for acquisition of the said land within reasonable time. What the counsel for the respondent contended that within ten years such a decision could have been taken and the period could have been further extended but this period of 28 years is certainly unreasonable period to put embargo on the right of the petitioners to use the land. Above that, the State Government has acted highly arbitrarily in treating the sale deeds to be cancelled automatically without giving any notice and an opportunity of hearing to the petitioners. Too technical approach in the matter is not justified at the ends of the Officers or the functionaries of a welfare State. While passing such an order, the Officers of the State Government or its functionaries have to keep in mind the important aspect that the original owner has on his own volition sold this land to the petitioners and the petitioners are the bonafide purchasers. Even if for one reason or the other the permission has not been granted for raising construction by the petitioners on the land how far it is justified on the part of the State Government to cancel the sale deed automatically. This amounts to divesting of the right accrued to the petitioners in the property and more so without there being any consequential order to the original owner for refund of the price paid together with reasonable compensation thereon. This one sided action on the part of the State Government is within the sphere of arbitrary and perverse action. Be that as it may, this Court cannot be oblivious of the fact that at one point of time this land was reserved for the purpose of extension of the aerodrome for civil aviation and transport, and a blanket order cannot be passed by this court in favour of the petitioners. If the land was really required for the purpose of extension of aerodrome for civil aviation and transport then it can be used for the said purpose by taking appropriate action for the acquisition thereof and payment of compensation to the petitioners but such a decision has to be taken within reasonable time and the persons who purchased that land for their residential houses should not be put in dark for all the years to come. Now we are in the year 1997 and 30 years have already been passed from the date of purchase of this plots by the petitioners and for one or the other reason they are not able to put the construction thereon.

8. In the result, all these special civil applications are allowed and the impugned orders therein i.e. of the State Government dated 20th April, 1981, and the consequential orders passed by the Mamatdar concerned for the correction of entry No.3256 dated

8-4-1994 in the revenue record are quashed and set aside. The State of Gujarat through the Chief Secretary is hereby directed to constitute a three member committee under his chairmanship to decide this matter after hearing all the parties concerned i.e. the petitioners, the original owner of the land, Surat Municipal Corporation, Surat Urban Development Authority and Airport Authority of India, New Delhi through its representative at Surat. The committee has to decide after hearing all the parties whether this land has to be reserved for the public purpose i.e. for the extension of aerodrome for civil aviation and transport. If it decides to reserve this land for that purpose then necessary decision may be taken then and there to acquire this land and to see that the proceedings of acquisition are completed within reasonable time. Where, on the other hand, the committee decides after hearing the Airport Authority Of India that this land is not required to be reserved for the purpose aforesaid then necessary decision may be taken for the grant of permission for construction of the houses by the petitioners on the land in dispute. This exercise has to be undertaken and completed within a period of nine months from the date of receipt of this order. The counsel for the petitioners state that all the petitioners are law abiding citizens and though the rule in the country is to raise the illegal constructions by the people but the petitioners are exception to it and they have not put any construction on the land. However, I do not consider proper to comment anything on this contention of the counsel for the petitioners except to say that all the parties are directed to maintain the status-quo in respect of the land in dispute till the matter is decided by the Government. Liberty is granted to the petitioners for revival of these special civil applications in case of difficulty. Rule made absolute in the aforesaid terms with no order as to costs.
